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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/018,515	12/13/2001	Satoshi Mekata	542-003-3	2642

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EXAMINER

PRYOR, ALTON NATHANIEL

ART UNIT

PAPER NUMBER

1616

MAIL DATE

DELIVERY MODE

07/08/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/018,515

Applicant(s)

MEKATA ET AL.

Examiner

ALTON N. PRYOR

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 February 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 22-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 22-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/SE/US)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

Applicant's arguments, see paper, filed 2/11/08, with respect to the rejection of claims under 35 USC 112 and 102(b) have been fully considered and are persuasive. The rejections are withdrawn.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 22-24 no longer remain rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The specification and examples therein disclose that the aerosol device must have the above parts and must contain a composition. Claim 22 drawn to a device without the inclusion of a composition is new matter since the device disclosed in the specification contains a composition.

Response to Applicants' Argument

Applicants point out that claim 22 was amended to recite "said cylinder communicating with the product, pressurized in said can" which makes it clear that an aerosol composition is used in the device.

Examiner agrees that such an amendment will require that the device contain a composition. For this reason the rejection is maintained.

Applicants have made corrections such that terms, "a needle", "a hollow piston", "a first spring means tending", a second spring means tending" are no longer read as new matter.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 22-24 no longer remain rejected under 35 U.S.C. 102(b) as being anticipated by Hiroshi (JP 11-342202; 12/14/99). New claims 23 and 24 are added to this rejection. Hiroshi teaches the aerosol device as claimed. The aerosol device according to Figures 1-10 in Hiroshi comprises a cylinder (3), port (40b), nozzle (36b), piston (4), needle valve (7), first coil spring (7), second coil spring (5), and pressure chamber (40,41) as instantly claimed. See abstract, Figures 1-10. Note the terms / phrases: "needle", "hollow piston", "first spring means tending" and "second spring

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means tending” are being interpreted as “a needle valve”, “a piston”, a first coil spring” and “a second coil spring” respectively to arrive at the 102(b) rejection.

Response to Applicants' Argument

Applicant argues that Hiroshi does not teach or suggest the instant spring constant that would allow for a ratio of injection time to stop time of 0.1 to 5.0 when the valve is open.

The Examiner agrees that Hiroshi does not teach a spring constant that would allow for a ratio of injection time to stop time of 0.1 to 5.0 when the valve is open. For this reason the rejection on record is maintained.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 22-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over by Hiroshi (JP 11-342202; 12/14/99) and Katano et al (JP 10278982; 10/20/97). In Figure 10 of Hiroshi the aerosol device is taught. In Figure 10 reference number 1 represents the can, reference number 3 represents the cylinder, reference number 7 represents the port, reference number 4 represents the piston, reference number 4a represents the nozzle, reference number 7 represents the valve, reference number 6 represents the inner surface, reference 5 represents the first coil spring and reference number 5 represents the second coil spring. Hiroshi does not teach a spring constant to give a

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ratio of an injection time to a stop time set at 0.1 to 5.0. Hiroshi also does not teach the product contained in the device having 20 to 70% by weight liquefied gas or having 0.1 to 5% by weight compressed gas. However, Katano et al teach aerosol containers being used to dispense liquefied gas and compressed gas. It would have obvious to modify the invention taught by Hiroshi to include the gas types taught by Katano et al since aerosol cans be used to contain the gas types.

Telephonic Inquiry

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton N. Pryor whose telephone number is 571-272-0621. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/Alton N. Pryor/

Primary Examiner, Art Unit 1616